

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ASi Industries GmbH,)
)
Plaintiff,)
)
vs.) Case No. 4:06CV951 CDP
)
MEMC Electronic Materials, Inc.,)
et al.,)
)
Defendants.)

MEMORANDUM AND ORDER

Under the Case Management Order issued in this case on December 11, 2006, defendants were granted the right to conduct a Rule 34 inspection of plaintiff's manufacturing facility limited in scope to the method or process that defendants allege infringes the patents. At the time of the CMO, defendant MEMC Electronic Materials had pending counterclaims alleging the infringement of seven different patents. However, MEMC has since requested voluntary dismissal of four of the seven counterclaim counts and plaintiff ASi Industries seeks voluntary dismissal of its declaratory judgment count pertaining to infringement.¹

After meeting and conferring, the parties have been unable to reach an

¹ Although no ruling has issued dismissing these counts because the parties disagree about the form of dismissal, I can nevertheless rule on the inspection motions now because I know that the claims will eventually be dismissed.

agreement on the scope of the rule 34 inspection and have filed motions setting out their positions. MEMC wants to inspect ASi's processes that utilize granular polysilicon. However, because MEMC no longer provides ASi with granular polysilicon, ASi no longer does any granular polysilicon processing for MEMC to inspect.

Granting or denying a request under rule 34 is a matter within the trial court's discretion. Belcher v. Bassett Furniture Industries, Inc., 588 F.2d 904, 907 (4th Cir. 1978). Under Federal Rule of Civil Procedure 26(c), this Court may "protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense" by denying an inspection. In light of the dropped claims, I no longer believe that an inspection is appropriate in this case. Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion for an order establishing the scope of the rule 34 inspection [#44] is GRANTED to the extent that the Court finds that a site inspection is no longer necessary.

IT IS FURTHER ORDERED that defendant's motion for ruling on rule 34 inspection [#45] is DENIED.


CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 12th day of March, 2007.